In the High Court of Judicature at Madras

Dated: 19/11/2003

Coram

The Hon'ble Mr. Justice R. Jayasimha Babu
and
The Hon'ble Mr. Justice S.R. Singharavelu

Tax Case No. 285 of 2001

Pandyan Hotels Ltd.
Madurai. ... Appellant

-Vs-

The Commissioner of Income Tax,
Madurai. ... Respondent

Tax case appeal under Section 260 A of the Income Tax Act against the order made by Income Tax Appellate Tribunal, Madras Bench 'C' in I.T.A. No: 2838(MDS)/1992 dated 16.03.2001 for the assessment year 1988 -89.

!For appellant : Mr. R. Srinivasan

^For respondent : Mr. J. Nareshkumar
Sr. Standing Counsel for
Income-Tax Department

:O R D E R

(Order of the Court
was made by R. Jayasimha Babu, J.)

The assessee is a hotelier. As the charges levied for the rooms in the hotel exceed the amount prescribed under the Tamil Nadu Tax on Luxuries Act, 1981 (hereinafter referred to as the Act) and the assessee is a person who provides luxury in a hotel as defined under Section 2 G of the Act, the assessee is required, under the provisions of the Act, to pay tax to the Government at the rates prescribed in the Act on the value of the luxury provided in the room.

2. The assessee is required by Section 6 of the Act to file a monthly return in the prescribed form. It is assessed to tax under Section 7 at the end of the year. Along with the monthly returns, the hotelier is required to pay the tax having regard to the period for which the rooms had been occupied

by its customers. Failure to file returns or failure to pay the amounts results in the imposition of penalties.

3. Under the scheme of the Act, a person, who occupies a room in a hotel wherein any luxury is provided, is not made liable for tax. The occupant of the room is not required to pay directly to the Government any amount by way of luxury tax nor can any assessment be made on that occupant for payment of tax. The only person who is required to make the payment is the hotelier. The hotelier, however, under the provisions of the Act, is empowered to collect the amount of tax from the occupant of the room. However, it is not obligatory on the hotelier to charge the tax separately in the hotel bill. It is permissible to collect a lumpsum from the occupant for the rental of the room which can include the element of luxury tax.
4. Whether or not the hotelier specifies the tax in the bill given to its customers, the hotelier is bound to discharge the liability for tax at the rates prescribed in the Act. That the liability of the hotelier, is primary is made clear by Sub-section 5 of Section 5 of the Act which reads thus, " 5 (5) Where any proprietor fails or neglects to collect the tax payable under this Act, the tax shall be paid by the proprietor as if the tax was collected by the proprietor from the person to whom the luxury was provided and who was accordingly liable to pay the same."

5. The Act does not contemplate any assessment or demand being made on the occupant. As already noticed, the hotelier is bound to pay the tax. Whether he chooses to collect the tax or does not collect the tax is entirely for him to decide. The amount of tax paid by the hotelier to the State would be deductable from its income while computing the hotelier's assessable income under the Income Tax Act as the discharge of such a statutory liability is clearly an admissible deduction.

6. The hotelier here seeks to put his case on a much higher plane. It is contended that the tax which the assessee is required to pay in terms of the Act is not an amount, even when it is an amount which had been charged to its customers and received from them which can be regarded as part of its trading receipts. The argument is that there is diversion of income by over riding title when the assessee collects tax from it customers.

7. Though the argument so put forth is attractive nevertheless, having regard to the scheme of the Act, the liability fastens solely on the hotelier assessee to pay the tax although the amount required to be paid by him is an amount which is referred to in the Act as an amount which can be "collected" from it's customers, and in case of failure to collect, the amount is regarded as if it had been collected by the hotelier from the person to whom the luxury is provided.
8. While some other enactments like the Sales Tax Act, by not prohibiting the dealer for recouping the amount of tax paid by him to the State by collecting the same from its customers, permits such collection, under the scheme of this Act, the hotelier assessee is directed to collect and pay but in case of collection not being made, the liability to pay is not brought to an end. Whether collection has or has not been made, if the room wherein the luxury is provided had been occupied by a customer, the hotelier

/assessee becomes liable for the payment of the tax.
9. The liability of the hotelier assessee to pay the State is absolute, provided, the rooms had been occupied by the customers of the assessee.
10. Having regard to the scheme of the Act, it is not possible to accept the argument that was put forth by the learned counsel for the assessee that the position of the assessee is that of an agent of the Government who has been directed to collect tax from its customers and remit the same to the Government and that the assessee's position is similar to that of one who is required to deduct tax at source on payment made by it to others. This is not a case where the assessee makes payments to any one. It is a case where the assessee receives an amount which it's customers must necessarily pay in order to enjoy the services provided by the hotelier. The amount of luxury tax need not be charged separately. If a customer were to inform the hotelier that he is not willing to pay the luxury tax which is paid by the hotelier, it is for the hotelier to decide whether or not to provide such a person with accommodation despite his refusal to pay the tax. It would be open to the hotelier to provide such a person with luxury in the hotel room and thereafter the assessee itself pay the tax to the Government. The Act recognises a situation where the hotelier 'fails or neglects' to collect the tax from its customer. No part of the amount received by the hotelier from the occupant of the room for the use of the room whether as an inclusive payment or with the tax element being shown separately can be regarded as not forming part of the trading receipts of the assessee.

11. The question referred namely :

" Whether on the facts and in the circumstances of the case, the Tribunal is right in treating 'Luxury Tax' collected by the appellant as a trading receipt liable to be assessed as the income of the Appellant's business?"

therefore, is answered against the assessee and in favour of the revenue.

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Index : Yes
Website : Yes

To,
1. The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan, III floor,
Besant Nagar,
Madras 90.

2. The Secretary,

Central Board of Revenue,
New Delhi.

3. The Deputy Commissioner of Income-tax
Special Range II,
Madurai.

4. The Commissioner of
Income Tax (Appeals) I,
Madurai.

5. The Commissioner of Income Tax,
Madurai.